

**MAJLIS BANDARAYA PETALING JAYA
v. LEMBAGA RAYUAN NEGERI SELANGOR
DARUL EHSAN & ANOR**

HIGH COURT MALAYA, SHAH ALAM
SHAHNAZ SULAIMAN J
[JUDICIAL REVIEW NO: BA-25-91-05-2024]
16 OCTOBER 2025

Abstract – (i) In considering whether to grant planning permission under the Town and Country Planning Act 1976 ('TCPA'), the local plan is of paramount importance. In directing that a planning permission be issued, the application to the Local Authority ought to be consistent with the local plan, and that there is sufficient quota in that area for the activities intended to be carried out in the property; (ii) The relevant provisions in relation to the granting of planning permission under the TCPA does not make it a requirement that any existing building which stands upon any land must first be certified with a completion and compliance certificate; (iii) An Appeal Board acts within its statutory powers under s. 23(3)(b) of the TCPA when it directs that planning permission be issued subject to conditions imposed by the Local Authority. The effect of this is that the Local Authority retains the discretion to impose its usual conditions when issuing the planning permission.

ADMINISTRATIVE LAW: Judicial review – Certiorari – Application for – Challenge against decision of Appeal Board allowing planning permission to change use of building from residential to temporary nursery – Whether there was usurpation of power or discretion by Appeal Board – Whether granting of planning permission required certificate of completion and compliance – Whether there was deviation from building plans – Whether there was undertaking made in respect of use of building – Whether Appeal Board acted illegally or unreasonably – Whether Appeal Board acted within its statutory power under s. 23(3)(b) of Town and Country Planning Act 1976 – Street, Drainage and Building Act 1974

LOCAL GOVERNMENT: Local Authority – Planning permission – Application for judicial review to challenge decision of Appeal Board allowing planning permission to change use of building from residential to temporary nursery – Whether there was usurpation of power or discretion by Appeal Board – Whether granting of planning permission required certificate of completion and compliance – Whether there was deviation from building plans – Whether there was undertaking made in respect of use of building – Whether Appeal Board acted illegally or unreasonably – Whether Appeal Board acted within its statutory power under s. 23(3)(b) of Town and Country Planning Act 1976 – Street, Drainage and Building Act 1974

- A An application entitled ‘Application for Planning Permission to make Material Change in the Use of Building from Residential/Commercial to Temporary Nursery’ was submitted by Tadika Asas Ilmu Yakin Utama (‘Tadika’) to the One Stop Centre of the Majlis Perbandaran Petaling Jaya (‘MBPJ’) for its approval (‘KM application’). The KM application was in
- B relation to the use of a property located within the Local Authority area of MBPJ (‘property’). MBPJ thereafter issued notices to the owners of neighbouring lands informing, *inter alia* that MBPJ had received the KM application from the Tadika and invited the recipients for their views over the said KM application. Some of the owners raised their objections while
- C some others had no objections over the KM application. The KM application was then considered by MBPJ and tabled at the Meeting No. 8 of year 2023 of the MBPJ’s Town Planning Committee (‘JKPB meeting’). Pursuant to the outcome of the JKPB meeting, it was recommended that the KM application be rejected for the following reasons: (i) that it deviated from the original approved building plan; (ii) that there was no certificate of completion and
- D compliance (‘CCC’) issued; and (iii) that the applicant in the KM application had signed undertakings to the effect that the said property be constructed solely for residential purposes. Based on the recommendation following the JKPB meeting, the MBPJ had *vide* a full meeting of MBPJ No. 9/2023 considered the KM application and rejected the same. MBPJ then conveyed
- E its refusal to issue planning permission in the Borang C(2) to the Tadika, and in the same form informed that the Tadika may lodge an appeal to the Appeal Board if it is aggrieved with the decision of MBPJ. The second respondent then lodged an appeal with the Appeal Board against the issuance of Borang C(2) by MBPJ, citing as reason that she had followed all the procedures and
- F guidelines required by MBPJ and received approval from MBPJ. The second respondent further furnished several documents in support of her appeal. MBPJ, on the other hand, furnished certain documents to the Appeal Board. The Appeal Board allowed the appeal of the second respondent and reversed the decision of the applicant in refusing to grant planning permission in the form of Borang C(2) (‘impugned decision’). The Appeal Board ordered that
- G Borang C(2) be replaced with a planning permission in the form of Borang C(1) subject to the second respondent’s compliance with notices issued by MBPJ pursuant to the Street, Drainage and Building Act 1974 (‘SDBA’). These notices were to demolish and remove the structures on the right side of the building and the left side of the building which were open terrace with
- H steel columns and metal decking roof (‘additional structures’). The applicant thus initiated this instant application for judicial review for an order of *certiorari* that the decision of the Appeal Board be moved to this court and set aside.
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Held (dismissing application for judicial review):

- (1)** The source of the Appeal Board's jurisdiction lies in s. 23 of the Town and Country Planning Act 1976 ('TCPA'), as the appeal was brought against MBPJ's refusal to grant planning permission under s. 22(3) of the TCPA, by way of Borang A pursuant to r. 4(2)(a) of the Town and Country Planning (Appeal Board) Rules 1999. Section 23(3) of the TCPA expressly empowers the Appeal Board to either allow or dismiss the appeal, in whole or in part, and to direct the local planning authority to grant planning permission, either unconditionally or subject to such conditions as it deemed fit. In the present case, the Appeal Board allowed the appeal and, by the impugned decision, directed that planning permission be issued in the form of Borang C(1) subject to conditions, including the removal of the additional structures. Importantly, the Appeal Board also imposed a further requirement that the second respondent comply with the general conditions ordinarily imposed by MBPJ. The effect of this was that MBPJ retained the discretion to impose its usual conditions when issuing the planning permission. Accordingly, the Appeal Board acted within its statutory powers under para. 23(3)(b) of the TCPA. (paras 27 & 28)
- (2)** While MBPJ contended that the Appeal Board had usurped its discretion and effectively compelled it to grant planning permission 'automatically', no elaboration was provided as to how the decision contravened the statutory scheme or exceeded the Appeal Board's jurisdiction. On the contrary, the provisions of s. 23(3) support the Appeal Board's authority. Moreover, MBPJ's own Borang C(2) had expressly informed the second respondent of her right of appeal to the Appeal Board, thereby acknowledging that MBPJ was bound to submit to the Appeal Board's jurisdiction. MBPJ could not now complain that its discretion was ousted, since as a statutory authority deriving its powers from the TCPA, it is subject to the appellate process and bound to comply with the orders of the Appeal Board. (paras 29 & 30)
- (3a)** MBPJ failed to adduce any cogent material to support its objections. In particular: (i) the Appeal Board found that the KM application was consistent with the local plan and that sufficient quota remained, with no contrary evidence supplied by MBPJ; (ii) MBPJ gave no explanation for seeking the views of residents notwithstanding s. 21(6) of the TCPA, which absolves it of such obligation where a local plan exists; (iii) MBPJ provided no data or analysis to substantiate claims of security or traffic problems, relying solely on the residents' objections; (iv) MBPJ did not justify why residents' views should override the local plan, which should have been the primary

- A consideration; and (v) MBPJ furnished no rationale for preferring the objections of residents opposed to the KM application over those who supported it. Accordingly, MBPJ could not now rely on the other relevant factors as grounds to challenge the validity of the impugned decision. (paras 36 & 37)
- B (3b) It was incumbent upon MBPJ to justify why the objections of some residents should prevail over supporting views, particularly when the KM application was consistent with the local plan. MBPJ failed to discharge this burden, and placed no sufficient material before the Appeal Board to justify its stance. It therefore could not now contend that the Appeal Board erred in failing to consider factors which MBPJ itself did not satisfactorily establish. The mere allegation that the impugned decision had removed from or deprived MBPJ of the power or discretion to consider the other relevant factors and the objections from the surrounding residents in the issuance of the planning permission, was not sufficient for the impugned decision to be quashed. (paras 41 & 42)
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- E (4) The Appeal Board found that there was indeed a CCC. In any event, MBPJ failed to cite any authority or explain satisfactorily on what basis a CCC for the purpose of a temporary 'taska' building must first be obtained prior to the application for material change in the use of the said property. The relevant provisions in relation to the granting of planning permission under the TCPA does not make it a requirement that any existing building which stands upon any land must first be certified with a CCC before any further development can be carried out. (paras 43, 47 & 52)
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- G (5) The Appeal Board had in its impugned decision imposed a condition that the additional structures be removed. Based on the written order of the impugned decision, that the removal of the additional structures would mean the planning permission is granted and MBPJ is to issue planning permission based on general and befitting conditions. The Appeal Board had made it a condition that for the planning permission to be issued, the additional structures are to be removed. This was in line with MBPJ's position that there must not be any deviation so that a planning permission may be applied and obtained. The mere fact that the impugned decision went against any practice of the MBPJ (which was not backed by any provisions of the law) was not sufficient for it to be quashed. (paras 54-56)
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- I (6) In the context of an application for planning permission, there was no stipulation that the second respondent was bound by her earlier undertakings. MBPJ had failed to show which provision it had relied upon in determining that an undertaking is a material consideration in

considering any application for planning permission. Moreover, MBPJ also failed to explain how an undertaking given would bind the second respondent such that no planning permission should be issued despite it being consistent with the local plan. In considering whether to grant planning permission under the TCPA, the local plan was of paramount importance. The Appeal Board in directing that a planning permission be issued had found the KM application to be consistent with the local plan, and that there was sufficient quota in that area for the activities the second respondent had intended to carry out in the said property. MBPJ fell short of explaining or placing sufficient material before the Appeal Board to establish its position that an undertaking prevents the maker thereof from not homering it in the context of town planning. The mere fact that such undertaking existed was not sufficient. This ground of complaint must also fail. Therefore, the Appeal Board had not acted illegally or unreasonably. (paras 59-61)

- (7) There was no illegality, unreasonableness or procedural impropriety which would enable this court to allow this application for judicial review. (para 62)

Case(s) referred to:

Akira Sales & Services (M) Sdn Bhd v. Nadiah Zee Abdullah & Another Appeal [2018] 2 CLJ 513 FC (*refd*)

Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Another Appeal [1997] 1 CLJ 665 CA (*refd*)

Perbadanan Pengurusan Sunrise Garden Condominium v. Sunway City (Penang) Sdn Bhd & Ors And Another Appeal [2023] 2 CLJ 333 FC (*refd*)

R Rama Chandran v. Industrial Court Of Malaysia & Anor [1997] 1 CLJ 147 FC (*refd*)

Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union [1995] 2 CLJ 748 CA (*refd*)

Legislation referred to:

Rules of Court 2012, O. 53

Street, Drainage and Building Act 1974, ss. 70(12), (13)(b), (20), 72(1), (6), 133

Town and Country Planning (Appeal Board) Rules 1999, r. 4(2)(a)

Town and Country Planning Act 1976, ss. 2, 18, 19, 21(6), 22(3), (5)(a), 23(3)(b)

For the applicant - Heidi Saw Ching Ying; M/s Fernandez & Selvarajah

For the 1st respondent - Hani Aziza Ismail; FC

For the 2nd respondent - Mohd Saiful Hadi Dowlad Rahuman; M/s Jehan & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Shahnaz Sulaiman J:

Introduction

[1] Applicant, the Local Authority in the area of Petaling Jaya (“MBPJ”), initiated this instant application for judicial review for an order of *certiorari* that the decision of the first respondent (“Appeal Board”) dated 20 February 2024 (“impugned decision”) be moved to this court and set aside.

- A [2] The Appeal Board had *vide* the impugned decision allowed the appeal of the second respondent and reversed (diakaskan) the decision of the applicant in refusing to grant planning permission in the form of Borang C(2) dated 6 September 2023 (“Borang C(2)”). The Appeal Board ordered that
B Borang C(2) be replaced with a planning permission in the form of Borang C(1) subject to the second respondent’s compliance with notices issued by MBPJ pursuant to the Street, Drainage and Building Act 1974 (“SDBA 1974”). These notices are to demolish and remove the structures on the right side of the building (dinding batu berlepa) and the left side of the building which are open terrace with steel columns and metal decking roof (teres terbuka bertiang besi dan bumbung metal deck) (“additional structures”).
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Factual Background

- [3] On 27 April 2023, an application entitled “Application for Planning Permission to Make Material Change in the Use of Building from “Residential/Commercial” to “Temporary Nursery” at Lot No. 61883, Jalan Damar SD 15/1 Bandar Sri Damansara PJU 9, 52200 Petaling Jaya, Selangor Darul Ehsan Messrs Tadika Asas Ilmu Yakin Utama” (Permohonan Kebenaran Merancang bagi membuat Perubahan Material dalam Penggunaan Bangunan daripada “Kediaman/Perniagaan” kepada “Taska Sementara” di Lot No. 61883, Jalan Damar SD 15/1 Bandar Sri Damansara PJU 9, 52200 Petaling Jaya, Selangor Darul Ehsan Tetuan Tadika Asas Ilmu Yakin Utama) was submitted by one Tadika Asas Ilmu Yakin Utama (“Tadika”) to the One Stop Centre of the MBPJ for its approval (“KM application”).
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- [4] The KM application was in relation to the use of a property bearing postal address Lot 61883 in Jalan Damar SD 15/1, located within the Local Authority area of MBPJ (“the said property”).
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- [5] MBPJ thereafter issued notices to the owners of neighbouring lands informing, *inter alia*, that MBPJ had received the KM application from the Tadika and invited the recipients for their views over the said KM application. Some of the owners raised their objections while some others had no objections over the KM application.
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- [6] The KM application was then considered by MBPJ and tabled at the Meeting No. 8 of year 2023 of the MBPJ’s Town Planning Committee which had convened on 22 August 2023 (“JKPB meeting”). Pursuant to the outcome of the JKPB meeting, it was recommended that the KM application be rejected for the following reasons:
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- (i) that it deviates from the original approved building plan;
(ii) that there was no certificate of completion and compliance (“CCC”) issued; and
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(iii) that the applicant in the KM application had signed undertakings to the effect that the said property be constructed solely for residential purposes. A

[7] Based on the recommendation following the JKPB meeting, the MBPJ had *vide* a full meeting of MBPJ No. 9/2023 considered the KM application and rejected the same for the reason that “the meeting recommends that this application be rejected because it deviates from the original approved building plan and is without CCC and the applicant had signed undertaking for the building erected to be used solely for the purpose of residential”. B

[8] MBPJ then conveyed its refusal to issue planning permission in the said Borang C(2) to the Tadika, and in the same form informed that the Tadika may lodge an appeal to the Appeal Board if it is aggrieved with the decision of MBPJ. C

[9] The second respondent then lodged an appeal with the Appeal Board against the issuance of Borang C(2) by MBPJ, citing as the reason that she had followed all the procedures and guidelines required by MBPJ and received approval from MBPJ. The second respondent further furnished several documents in support of her appeal. D

[10] MBPJ on the other hand, had also furnished certain documents to the Appeal Board. E

[11] Hearing before the Appeal Board was held on 20 February 2024 before the learned Chairman and two other members, in the presence of the second respondent and one Mr Au Kean Tong as the appellants, as well as Mr Muhammad Amin bin Mohamed Aman, Mohd Yusof bin Che Aziz and Mohammad Haniff bin Abdul Rahim representing MBPJ as the respondent. The impugned decision was delivered on the same day. F

[12] The three page written order of the Appeal Board stated the following:

(i) the Appeal Board had examined and perused the bundle of documents of both parties before it and heard their respective submissions; G

(ii) the Appeal Board found that there is a local plan namely Rancangan Tempatan Petaling Jaya 2 (Pengubahan 3) (“local plan”) which was gazetted on 16 February 2023 (*Gazette* No. 514), and according to the local plan, the said property is located within Blok Perancangan Kecil 2.1 PJU 1 – PJU 5 dan PJU 10 (Small Block Plan 2.1 PJU 1 – PJU 5 and PJU 10) (“BPK 2.1”); H

(iii) based on the map of BPK 2.1 for the proposed land use of that particular block (Peta Cadangan Guna Tanah), the main land use is residential; I

- A (iv) based on Column III of Schedule 7.1.3: Land Use Class BPK 2.1 (Jadual 7.1.3: Kelas Kegunaan Tanah BPK 2.1) entitled “activity allowed with condition”, community institution and facility (institusi dan kemudahan masyarakat) was included;
- B (v) based on the issued document of title to the said property, the category of land use is “building” and express condition is “residential building”;
- (vi) based on Borang C(2) dated 6 September 2023, the reason for the KM application being refused is due to the deviation from the original approved building plan, absence of CCC and that the applicant had executed undertaking that the said property will solely be for the purpose of residential only;
- C (vii) the Appeal Board found that CCC in respect of the said property was issued by one Ar Sha Kam Foo dated 18 March 2023 bearing reference No. LAM/S/No. 32064;
- D (viii) based on the Schedule of Land Use Class for BKP 2.1 in the local plan, it was stated that “activity allowed with condition” includes community institution and facility, consistent with ‘taska’ activity (selaras dengan aktiviti taska); and
- E (ix) based on para. 22(5)(a) of the Town and Country Planning Act 1976 (“TCPA 1976”), a planning permission can be granted for a limited period.

Principles Relating To Judicial Review

- F [13] Prior to considering and analysing this application, it would be prudent for this court to be reflected on the legal principles relating to judicial review. Order 53 of the Rules of Court 2012 provides for the procedures for an application for judicial review.
- G [14] It is trite that the decision of a public authority may be reviewed by this court on the grounds of illegality, irrationality, procedural impropriety or disproportionality. This review is not confined to the decision-making process but also to the merits of the decision.
- H [15] In the Federal Court case, *Akira Sales & Services (M) Sdn Bhd v. Nadiyah Zee Abdullah & Another Appeal* [2018] 2 CLJ 513; [2018] 2 MLJ 537, the liberal approach on judicial review in *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 MLJ 145 has been re-emphasised at pp. 547 to 548 (CLJ); pp. 571 to 572 (MLJ) as follows:
 - [45] In the same appeal, Edgar Joseph Jr FCJ (Eusoff Chin in agreement) said that an award could be reviewed for substance as well as for process:
- I It is often said that judicial review is concerned not with the decision but the decision making process. (See *eg, Chief Constable of North Wales Police v. Evans* [1982] 1 WLR 1155). This proposition, at full face value, may well

convey the impression that the jurisdiction of the courts in Judicial Review proceedings is confined to cases where the aggrieved party has not received fair treatment by the authority to which he has been subjected. Put differently, in the words of Lord Diplock in *Council of Civil Service Unions & Ors v. Minister for the Civil Service* [1985] AC 374, where the impugned decision is flawed on the ground of procedural impropriety. But Lord Diplock's other grounds for impugning a decision susceptible to Judicial Review make it abundantly clear that such a decision is also open a challenge on grounds of 'illegality' and 'irrationality' and, in practice, this permits the courts to scrutinise such decisions not only for process, but also for substance. In this context, it is useful to note how Lord Diplock (at pp. 410-411) defined the three grounds of review, to wit, (i) illegality, (ii) irrationality, and (iii) procedural impropriety. This is how he put it:

By 'illegality' as a ground for Judicial Review, I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By 'irrationality', I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (see *Associated Provincial Picture Houses Ltd v. Wednesbury Corp.* [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the courts' exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in *Edwards v. Bairstow* [1956] AC 14, or irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though undefinable mistake of law by the decision maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by Judicial Review.

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

Lord Diplock also mentioned 'proportionality' as a possible fourth ground of review which called for development.

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A [16] Further, the meaning of error of law has also been explained in the case of *Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union* [1995] 2 CLJ 748; [1995] 2 MLJ 317 in the following words:

B Is neither feasible nor desirable to attempt an exhaustive definition of what amounts to an error of law, for the categories of such an error are not closed. But it may be said that an error of law would be disclosed if the decision maker asks himself the wrong question or takes into account irrelevant considerations or omits to take into account relevant considerations (what may be conveniently termed *Anisminic* error) or if he misconstrues the terms of any relevant statute, or misapplies or misstates a principle of the general law.

C [17] Founded on these principles, this court will consider this application for judicial review.

Applicant's Submission

D *Issue Of CCC*

E [18] It was argued that when the KM application was submitted to MBPJ, there were already structures erected and renovation done to the said property, which was not approved by MBPJ. It follows that the CCC issued based on the original building plan is no longer valid. Since the second respondent had deviated from the original building plan, MBPJ is not able to lawfully grant planning permission in respect of the KM application.

Issue Of Second Respondent's Undertaking And The Objections From The Neighbours

F [19] It was revealed that on 25 September 2020, the second respondent, together with Mr Au Kean Tong, gave an undertaking before the Appeal Board that the subject property would be used solely for residential purposes, and not for any other purpose, without the prior written consent of MBPJ. This undertaking was given in connection with an application for building plan approval for the construction of a three-storey house on PT35364, Mukim Sungai Buloh, Daerah Petaling, and was expressly made pursuant to s. 70(12) and para. 70(13)(b) of the Street, Drainage and Building Act 1974, binding the second respondent not to deviate from the approved plan or conditions without MBPJ's consent.

H [20] Subsequently, on 19 February 2021, the second respondent gave a similar undertaking in respect of a fresh planning application ("2021 application") for a three-storey house with a swimming pool on Lot 61883, Mukim Sungai Buloh. This later undertaking was confined to restricting the use of the property to residential purposes only but did not cite any statutory provisions. MBPJ approved the 2021 application on 23 February 2021 subject to various conditions, including that the land and building be used solely for residential purposes, and that a statutory declaration to that effect be executed in the form prescribed by MBPJ.

[21] MBPJ contends that the second respondent is bound by her undertakings, and that in view of the objections raised by surrounding residents, the original purpose of the property does not extend to activities such as the operation of a 'tadika' (kindergarten). It was therefore submitted that granting planning permission to the KM application would defeat the legitimate expectations of the neighbouring residents.

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Issue On The Validity Of The Impugned Decision

[22] MBPJ contended that since the additional structures were unlawfully erected, the Appeal Board's decision to make their removal a condition of the planning permission for the KM application was self-contradictory and amounted to condoning the second respondent's illegality. MBPJ further argued that in considering the KM application, it was obliged to take into account relevant factors such as zoning quota, safety, and traffic concerns associated with the proposed kindergarten activity. It was also MBPJ's policy not to entertain any planning permission applications where there existed unlawful deviations from the original approved building plan, and that the second respondent was required to remove the additional structures before submitting any fresh application.

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[23] MBPJ maintained that the Appeal Board, in making the impugned decision, had usurped its statutory discretion as the Local Authority, as the decision effectively compelled MBPJ to issue planning permission for the kindergarten activity without further consideration. It was further contended that the Appeal Board had failed to provide express reasons for its decision.

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[24] Additionally, MBPJ filed a further affidavit exhibiting the issue of the document of title, drawing attention to the express land use condition, namely "residential building" (bangunan kediaman). This aspect, however, was not raised in MBPJ's O. 53's statement filed pursuant to the Rules of Court 2012.

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The Respondents' Submissions

[25] The Appeal Board replied each of the MBPJ's statement in the following manner:

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- (i) the area where the said property is located at has local plan, and therefore there is no necessity for the views of the neighbouring lots over the KM application to be taken into consideration. The Appeal Board took a further position that MBPJ's action of procuring the views of the neighbouring lots as against the law, "solely for the purpose of rejecting" (semata-mata untuk menolak) the KM application;
- (ii) in relation to the allegation that the second respondent (the applicant of the KM application) had deviated from the original building plan, the Appeal Board found that MBPJ had issued a notice under

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- A sub-s. 72(1) of the SDBA 1974 (“s. 72 notice”) and it was on this basis that the impugned decision contained such order from the Appeal Board that the second respondent is to remove the additional structures;
- B (iii) it was also revealed that after the issuance of the impugned decision, the second respondent had informed the Appeal Board that she had submitted to MBPJ an amended plan pertaining to the additional structures and had obtained the approval thereof from MBPJ and it is not for the MBPJ to approbate and reprobate. At any rate, it was for the MBPJ to enforce the s. 72 notice pursuant to subs. 72(6) of the
- C SDBA 1974 which MBPJ had done on 10 May 2023, and MBPJ has the authority to act upon itself to cause the additional structures to be demolished;
- D (iv) the Appeal Board further found that it was not the case that the said property is without CCC. There was a CCC produced and according to the Registrar of the Appeal Board, the witness of the MBPJ (who is not the deponent for MBPJ in the instant application) seemed to be a little bit shocked (sedikit terperanjat) upon learning that there was a CCC for the said property;
- E (v) pertaining to the undertakings of the second respondent, it was averred on behalf of the Appeal Board that the Appeal Board had taken into account the land use class for BPK 2.1 in the local plan and one of the activities allowed with condition for residential is the activity of community institution and facility, including educational facility. For this reason, the KM application was in line with the local plan and has
- F to be read together;
- G (vi) with regard to the express condition found in the issue of the document of title for the said property and that the ‘taska’ activity is against such express condition, it was averred that such argument was never raised during the appeal before the Appeal Board and it was not part of the reasons Borang C(2) was issued by the MBPJ;
- H (vii) it was also averred that the Appeal Board had taken into account the verification made by the second respondent with the MBPJ that there remained sufficient quota for the operation of ‘taska’ in that area where the said property was located, and this particular issue was not answered by the MBPJ during the hearing. Consideration was also being made to the fact that the second respondent is an existing operator of the same business in that same area, and the KM application was submitted because the rental of that area was rising, and the second respondent happened to have her own premises;
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- (viii) on top of that, the Appeal Board stated that the issue of safety, traffic, *etc*, was not part of the MBPJ's reasons in the issuance of Borang C(2), and in any event, the Appeal Board had taken into account the issue of security and traffic that there was a boom gate in that area, and that there was different entry and exit lane in that area. A designated space for the dropping off and picking up of the children had also been prepared; and A
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- (ix) the reasons in arriving at the impugned decision was also informed to the persons attending the appeal before the Appeal Board, and the deponent of the MBPJ in the instant application who is not the person attended is in no position to allege otherwise. C
- [26]** The second respondent averred that:
- (i) the instant application is defective because the said Mr Au Kean Tong was not cited as one of the parties;
- (ii) the KM application was not for something that is "not good" (tidak baik) but for the purpose of education, as children education 'taska', and there was an overwhelming 57 responses from the surrounding residents supporting the KM application, compared to 49 responses which are against it; D
- (iii) there is a CCC for the said property, and in support of the KM application, the second respondent had obtained conditional approval from the Social Welfare Office for the District of Petaling as well as supporting letter for licensing from the Fire and Rescue Department of Malaysia; E
- (iv) there is still sufficient quota for the operation of 'taska' based on the system of the MBPJ, and the second respondent had paid an amount of RM500 to purchase "Jualan Buku Pelan Setara bagi Permohonan Kediaman Rumah Sesebuah kepada (Taska Sementara)" for the purpose of verification; F
- (v) the second respondent further averred that the 2021 application was made because in the circumstances of the case, there must first be an application made for the construction of a bungalow, before any application for material change of land use, such as the KM application filed, and that the second respondent has the rights to make such application; and G
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- (vi) the second respondent acknowledged that out of the additional structures, the second respondent had applied for and obtained the approval for the erection of the plastered brick wall, *vide* a letter dated 4 April 2024 from the MBPJ. The other part which is the open terrace with steel columns and metal decking roof was duly demolished. I

A Analysis

The Extent Of The Decision Of Appeal Board

B [27] The source of the Appeal Board’s jurisdiction lies in s. 23 of the Town and Country Planning Act 1976 (“TCPA 1976”), as the appeal was brought against MBPJ’s refusal to grant planning permission under sub-s. 22(3) of the TCPA 1976, by way of Borang A pursuant to r. 4(2)(a) of the Town and Country Planning (Appeal Board) Rules 1999. Subsection 23(3) of the TCPA 1976 expressly empowers the Appeal Board to either allow or dismiss the appeal, in whole or in part, and to direct the local planning authority to grant planning permission, either unconditionally or subject to such conditions as it deems fit.

D [28] In the present case, the Appeal Board allowed the appeal and, by the impugned decision, directed that planning permission be issued in the form of Borang C(1) subject to conditions, including the removal of the additional structures. Importantly, the Appeal Board also imposed a further requirement that the second respondent comply with the general conditions ordinarily imposed by MBPJ. The effect of this was that MBPJ retained the discretion to impose its usual conditions when issuing the planning permission. Accordingly, the Appeal Board acted within its statutory powers under para. 23(3)(b) of the TCPA 1976.

F [29] While MBPJ contended in its O. 53’s statement that the Appeal Board had usurped its discretion and effectively compelled it to grant planning permission “automatically”, no elaboration was provided as to how the decision contravened the statutory scheme or exceeded the Board’s jurisdiction. On the contrary, the provisions of sub-s. 23(3) support the Appeal Board’s authority.

G [30] Moreover, MBPJ’s own Borang C(2) had expressly informed the second respondent of her right of appeal to the Appeal Board, thereby acknowledging that MBPJ was bound to submit to the Board’s jurisdiction. MBPJ cannot now complain that its discretion was ousted, since as a statutory authority deriving its powers from the TCPA 1976, it is subject to the appellate process and bound to comply with the orders of the Appeal Board.

Whether There Was An Usurpation Of Power Or Discretion By The Appeal Board

H [31] To further explain what MBPJ meant in that MBPJ is acting “automatically” pursuant to the impugned decision, it was elaborated that MBPJ had the responsibility or duty by law to consider other relevant factors such as the issue of quota, safety and traffic issue before approving any kindergarten activity (“other relevant factors”).

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- (i) Mesyuarat mengesyorkan permohonan ini TOLAK kerana melencong daripada kelulusan pelan bangunan asal serta tidak mempunyai CCC serta pemohon telah menandatangani Akur Janji bagi menggunakan bangunan yang didirikan bagi tujuan kediaman semata-mata.

A

[32] At the risk of repetition, based on the Borang C(2), no mention was ever made in respect of any of the other relevant factors mentioned above, as shown below:

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[33] This court therefore proceeded to examine whether there was any material which relates to the abovementioned issue, that was placed before the Appeal Board. It is trite that in determining whether the impugned decision warrants the intervention of this court exercising its supervisory jurisdiction, this court could not go beyond what was placed before the Appeal Board in arriving to the impugned decision but instead is confined to the materials that were before the Appeal Board (see *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Another Appeal* [1997] 1 CLJ 665, per Siti Norma Yaakob JCA (as Her Ladyship then was) at p. 752, row g).

C

D

[34] Before the Appeal Board, MBPJ was accorded with the opportunity to present its documents. Based on the bundle, there was one piece of document where MBPJ had mentioned the matters which it had taken into account as follows:

E

- (i) there were objections from the residents and there was undertaking from the second respondent in that the said property was not intended for 'taska' activity;
- (ii) the second respondent had to first demolish the unlawful structures before obtaining CCC;
- (iii) there was a deviation from the original building plan and devoid of CCC, as well as objections from many residents, and that the second respondent had breached her undertaking;
- (iv) the second respondent initially had never intended to reside in the said property because the internal renovations were for the purpose of 'taska' activity;
- (v) there was a hearing session, and no objection from the second respondent to erect a building for the purpose of residential. However, prior to the issuance of CCC, the second respondent made an application to have material change over the use of the said property, and this had received objections from the residents; and
- (vi) the KM application could not be considered because of the breach of undertaking and there was deviation from the original approved building plan.

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- A [35] It is evident that MBPJ did not raise the “other relevant factors”, namely quota, security, and traffic concerns, before the Appeal Board, whether in Borang C(2), its statement of reasons, or the minutes of the JKPB meeting. Consequently, the Appeal Board cannot be faulted under the principles in *Rama Chandran (supra)* for failing to consider issues not relied upon by MBPJ despite having had ample opportunity to place such matters before the Board.
- B
- C [36] Even if the Appeal Board were under a wider duty to independently consider the other relevant factors, MBPJ failed to adduce any cogent material to support its objections. In particular: (i) the Appeal Board found that the KM application was consistent with the local plan and that sufficient quota remained, with no contrary evidence supplied by MBPJ; (ii) MBPJ gave no explanation for seeking the views of residents notwithstanding sub-s. 21(6) of the TCPA 1976, which absolves it of such obligation where a local plan exists; (iii) MBPJ provided no data or analysis to substantiate claims of security or traffic problems, relying solely on the residents’ objections; (iv) MBPJ did not justify why the residents’ views should override the local plan, which should have been the primary consideration; and (v) MBPJ furnished no rationale for preferring the objections of residents opposed to the KM application over those who supported it.
- D
- E [37] Accordingly, this court is of the considered view that MBPJ cannot now rely on the other relevant factors as grounds to challenge the validity of the impugned decision.
- F [38] The court is aware and takes cognisance that the present judicial review concerns the impugned decision of the Appeal Board, and not MBPJ’s Borang C(2). Accordingly, before any duty can be imposed on the Appeal Board to consider additional factors, MBPJ must first demonstrate that the impugned decision was baseless on the materials before the board so as to fall within the grounds of review established in *Rama Chandran (supra)*.
- G [39] Although MBPJ relied on “objections from surrounding residents” in refusing planning permission, such objections were not advanced with sufficient substantiation. The second respondent, out of caution, had addressed those issues in her written submissions, though the Appeal Board itself had dealt with them during the hearing.
- H [40] This court is of the view that MBPJ’s reliance on the residents’ objections contradicted the existence of a local plan, which governs land use in the area and displaces any obligation to solicit or consider the residents’ views. Indeed, it may be argued that residents may have no right to object where a local plan exists. (See: *Perbadanan Pengurusan Sunrise Garden Condominium v. Sunway City (Penang) Sdn Bhd & Ors and Another Appeal* [2023] 2 CLJ 333).
- I

[41] In the view of this court, it was incumbent upon MBPJ to justify why the objections of some residents should prevail over supporting views, particularly when the KM application was consistent with the local plan. MBPJ failed to discharge this burden and placed no sufficient material before the Appeal Board to justify its stance. It therefore cannot now contend that the Appeal Board erred in failing to consider factors which MBPJ itself did not satisfactorily establish.

[42] The mere allegation that the impugned decision had removed from or deprive of MBPJ the power or discretion to consider the other relevant factors and the objections from the surrounding residents in the issuance of the planning permission, in the considered view of this court, is not sufficient for the impugned decision to be quashed.

Issue Of CCC Of The Said Property

[43] Pertaining to the issue that the KM application was refused due to the fact that there was no CCC for the said property, the Appeal Board found that there was indeed a CCC.

[44] Based on the Borang C(2) issued by the MBPJ, one of the reasons being cited is that there is no CCC with regard to the said property. Such reason is consistent with the minutes of the JKPB meeting. MBPJ has always maintained that there was no CCC for the said property. The Appeal Board having found in favour of the second respondent on this issue, based on the material available before it. This court finds no reason to disturb this finding.

[45] Nonetheless, before this court, MBPJ appeared to have deviated from its earlier stance. It was argued that:

- (i) since there is additional structures, the CCC is invalid; and
- (ii) the CCC was for the construction of a residential unit and not for the purpose of temporary 'taska' building.

[46] The above two issues were not raised before the Appeal Board. It is therefore not for this court to assess the validity of the impugned decision beyond the materials placed before the Appeal Board.

[47] In any event, MBPJ failed to cite any authority or explain satisfactorily on what basis a CCC for the purpose of temporary 'taska' building must first be obtained prior to the application for material change in the use of the said property.

[48] A CCC of a particular building was issued pursuant to sub-s. 70(20) of the SDBA 1974, with the procedures and the requirements pursuant to the by-laws made under sub-s. 133 of the SDBA 1974.

[49] The TCPA 1976 is the Act upon which the KM application was based

- A upon, made no mention of CCC. The KM application was made pursuant to s. 21 of the TCPA 1976. As mentioned, it was an application for material change in the use of the said property as a temporary ‘taska’. The term “material change” is part of the definition of “development” under s. 2 of the TCPA 1976, and therefore a planning permission to that effect was required under s. 19 of the TCPA 1976.
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[50] Section 22 of the TCPA 1976 provides the considerations the Local Authority, MBPJ, ought to take into account in granting planning permissions.

- C [51] From the foregoing provisions of the TCPA 1976 that the purpose of considering an application for planning permission is to ensure that any development is in line with the town and country planning, and the local plan (see s. 18 of the TCPA 1976), and this was stated clearly in the long title of the TCPA 1976.

- D [52] The relevant provisions in relation to the granting of planning permission under the TCPA 1976 does not make it a requirement that any existing building which stands upon any land must first be certified with a CCC before any further development can be carried out.

- E [53] Even if it is the concern of the MBPJ that the said property in its current condition is not fit for the purpose of temporary ‘taska’, there is nothing to prevent MBPJ from imposing a condition in its planning permission that a CCC for a temporary ‘taska’ (if at all it exist) must be obtained and imposed such other conditions for the second respondent to comply with. These could be done with the issuance of a planning permission. MBPJ had rejected the KM application completely on the ground that there was no CCC.
- F

Issue On Deviation From Building Plans

- G [54] The Appeal Board had in its impugned decision imposed a condition that the additional structures be removed. Based on the written order of the impugned decision, that the removal of the additional structures would mean the planning permission is granted and MBPJ is to issue planning permission based on general and befitting conditions. The Appeal Board had made it a condition for the planning permission to be issued, the additional structures are to be removed.

- H [55] It was also averred on behalf of MBPJ that it is a practice or custom that an application for planning permission will be rejected until and unless the additional illegal structures have been removed. Such averment is not supported by any provision of the law.

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[56] Moreover, the Appeal Board had ordered that the additional structures be removed, in line with MBPJ's position that there must not be any deviation so that a planning permission may be applied and obtained. A

[57] It is also apposite to mention that the mere fact that the impugned decision goes against any practice of the MBPJ (which was not backed by any provisions of the law) is not sufficient for it to be quashed. B

Issue On Undertaking Made In Respect Of The Use Of Building

[58] Finally, on the issue of undertakings of the second respondent. It was the case of the MBPJ that the second respondent is bound by its undertakings. The Appeal Board explained through its affidavit before this court that reference was being made to the land use class for BPK 2.1 where the said property was located, in the local plan and that it prevails over the undertakings. C

[59] In the context of an application for planning permission, there is no stipulation that the second respondent is bound by her earlier undertakings. MBPJ had failed to show which provision it had relied upon in determining that an undertaking is a material consideration in considering any application for planning permission. D

[60] Moreover, MBPJ had also failed to explain on how an undertaking given would bind the second respondent such that no planning permission should be issued despite it being consistent with the local plan. E

[61] In considering whether to grant planning permission under TCPA 1976, the local plan is of paramount importance. The Appeal Board in directing that a planning permission be issued had found the KM application to be consistent with the local plan, and that there is sufficient quota in that area for the activities the second respondent intend to carry out in the said property. This court finds, MBPJ falls short of explaining or placing sufficient material before the Appeal Board to establish its position that an undertaking prevents the maker thereof from not homering it in the context of town planning. The mere fact that such undertaking exists is not sufficient. This ground of complaint must also fail. Therefore, this court finds the Appeal Board had not acted illegally or unreasonably. F G

Conclusion

[62] For the aforementioned reasons, this court is satisfied that there is no illegality, unreasonableness or procedural impropriety which will enable this court to allow this application for judicial review. This application for judicial review is therefore dismissed. Costs of RM5,000 to be paid to the second respondent subject to allocator. H

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